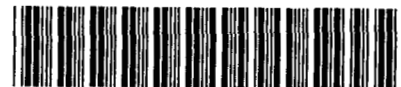


OPEN MEETING ITEM



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES



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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: DECEMBER 30, 2003

DOCKET NO: W-03263A-00-0470

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc Stern. The recommendation has been filed in the form of an Opinion and Order on:

DIAMOND VALLEY WATER USERS CORPORATION
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 8, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:


JANUARY 13, 2004 and JANUARY 14, 2004

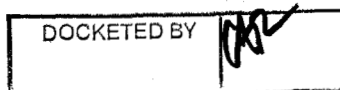
For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

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DEC 30 2003


BRIAN C. McNEIL
EXECUTIVE SECRETARY



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www.cc.state.az.us

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF:

DOCKET NO. W-03263A-00-0470

9 KEVIN GREIF,

Complainant,

10 vs.

DECISION NO. _____

11 DIAMOND VALLEY WATER USERS
12 CORPORATION,

Respondent.

OPINION AND ORDER

13 DATE OF HEARING:

October 2, 2003

14 PLACE OF HEARING:

Phoenix, Arizona

15 ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

16 APPEARANCES:

Mr. Kevin Greif, In propria persona.

17 **BY THE COMMISSION:**

18 On July 11, 2000, Mr. Kevin Greif ("Complainant") filed with the Arizona Corporation
19 Commission ("Commission") a Complaint against Diamond Valley Water Users Corporation
20 ("DVWUC" or "Respondent"). At the time, Mr. Greif's Complaint was filed in concert with a
21 number of other Complaints filed by other customers of Respondent. These Complaints involved
22 either billing disputes or claims of the mismanagement of DVWUC. Although Mr. Greif's
23 Complaint was served along with those of the other Complainants, Respondent failed to file an
24 Answer to any of the Complaints. In the interim, while his Complaint was pending, the Commission
25 issued Decision No. 63587 (April 4, 2001), in which the Commission's Utilities and Legal Divisions
26 ("Staff") were authorized to take all lawful action necessary to engage a qualified management entity
27 to operate the utility. Respondent is presently under the interim management of Bradshaw
28 Management Corporation ("Bradshaw"), which is operated by Mr. Tim Kylo.

1 On June 27, 2003, Staff filed a memorandum requesting that certain of the outstanding
2 Complaints which had been filed against Respondent be administratively closed because they had
3 been resolved through arbitration proceedings conducted by Staff. Staff stated that Bradshaw
4 currently oversees all operations for DVWUC including customer billing and that earlier issues
5 related to billing problems had been resolved. Mr. Greif did not want his Complaint to be either
6 dismissed or administratively closed.

7 On July 31, 2003, by Procedural Order, a pre-hearing conference was scheduled on August
8 21, 2003.

9 On August 5, 2003, Mr. Greif telephonically requested that the proceeding be continued due
10 to a conflict with his work schedule and further requested that the proceeding be rescheduled for
11 hearing on October 2, 2003, without the necessity of a pre-hearing conference.

12 On August 7, 2003, by Procedural Order, a hearing was ordered to be conducted on Mr.
13 Greif's Complaint on October 2, 2003.

14 On October 2, 2003, a full public hearing was convened before a duly authorized
15 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Complainant
16 appeared on his own behalf. Neither Respondent nor Bradshaw appeared. Staff did not take part in
17 the proceeding. At the conclusion of the hearing, the matter was taken under advisement pending
18 submission of a Recommended Opinion and Order to the Commission.

19 Subsequently, on October 24, 2003, by Procedural Order, Staff was ordered to review
20 Decision No. 63457, the management agreement with Bradshaw and the transcript of the instant
21 proceeding and to file a response to address the concerns voiced by Mr. Greif prior to a
22 Recommended Opinion and Order being prepared.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 **FINDINGS OF FACT**

- 27 1. Pursuant to authority granted by the Commission, DVWUC provides public water
28

1 service utility service to more than 400 customers in various parts of Yavapai County, Arizona.¹

2 2. On July 11, 2000, Mr. Greif filed a Complaint in which he alleged that there were
3 billing errors for his water usage by the Respondent.

4 3. While Mr. Grief's Complaint was pending, in response to a number of other customer
5 Complaints and a Complaint and Order to Show Cause, the Commission issued Decision No. 63547,
6 which authorized the Commission's Staff "to take all lawful action necessary, including court action,
7 to engage a qualified management entity to operate, manage and maintain Diamond Valley Water
8 User's Corporation in order to bring the utility into full compliance with Arizona law, the
9 Commission's Rules and the Commission's Orders." The Commission further ordered that the
10 Respondent's present officials maintain the Respondent's operations until the transition for the
11 operation of the system was completed by the management entity selected by Staff. Additionally, the
12 management entity was ordered to file quarterly progress reports including information with respect
13 to revenues and expenses for a period of one year from the effective date of Decision No. 63547.
14 Lastly, Staff was authorized to take court action to enforce compliance with Decision No. 63547, if
15 necessary.

16 4. Subsequently, Staff retained Bradshaw and Mr. Kylo to operate DVWUC.

17 5. Mr. Greif acknowledged that his initial Complaint with respect to a billing dispute had
18 been resolved by Bradshaw and that his concerns had progressed to other areas over the passage of
19 time since Decision No. 63547.

20 6. The primary concerns raised by Mr. Greif during the hearing are as follows: the
21 ownership of the utility's assets since Respondent's Articles of Incorporation were revoked on April
22 28, 2003, pursuant to A.R.S. § 10-1420 (failure to file Annual Reports); what would happen to
23 customers if Bradshaw terminated its services; various corporate compliance issues; and whether the
24 revenues collected by Bradshaw are being properly spent and accounted for.

25 ¹ DVWUC was originally incorporated as a non-profit corporation in October 1994 by Mr. and Mrs. Guy Eminger
26 and Mr. and Mrs. Robert Seleman to operate the water utility which they acquired after the utility's former operator filed
27 for Chapter 7 bankruptcy proceedings in the United States Bankruptcy Court for the District of Arizona. The
28 Commission approved the purchase of the utility assets and transfer of the Certificate of Convenience and Necessity
("Certificate") from the former owner to DVWUC in Decision No. 60125 (March 19, 1997) in order to provide water
utility service in an area located between Prescott Valley and Prescott, Arizona. DVWUC was dissolved as a non-profit
corporation on April 28, 2003 by the Commission's Corporations Division for failure to file its corporate Annual Report.

1 7. On October 24, 2003, by Procedural Order, Staff was directed to address the concerns
2 voiced by Mr. Greif during the hearing in light of Decision No. 63457, the management agreement
3 with Bradshaw and to file a response to address these concerns prior to a Recommended Opinion and
4 Order being prepared by the presiding Administrative Law Judge.

5 8. On December 8, 2003, Staff filed its response in an attempt to address Mr. Greif's
6 concerns voiced at the hearing.

7 9. First, Staff addressed the issue concerning the ownership of Respondent's assets.
8 Staff pointed out that according to DVWUC's Articles of Incorporation ("Articles") dated November
9 8, 1994, it is stated at Article IV, the Membership clause, that Respondent "shall be a non-stock
10 corporation and shall be owned by its members . . ." However, Staff went on to point out that the
11 term "member" was not defined in the Articles and that there appear to be different classes of who
12 can be termed "members". Staff opined that there was a differentiation between "members" who
13 were the water users and those individuals who had incorporated Respondent and acted as its initial
14 directors/officers. Staff believes that the intent of the Membership clause was to include all water
15 users and that they now share in the ownership of DVWUC.

16 10. Staff's analysis of Respondent's ownership with respect to the utility assets is
17 somewhat ambiguous and does not clearly state whether the incorporators or the undefined
18 "members" or water users are the actual owners of DVWUC's assets.

19 11. Secondly, with respect to Bradshaw, Staff pointed out that Bradshaw is not involved in
20 the affairs of the defunct corporation and is not required to make filings with the Commission's
21 Corporations Division, but only filings related to the operation of the Respondent as a water utility in
22 the form of the Utilities Division Annual Report.

23 12. Staff further acknowledged that Bradshaw had filed the quarterly progress reports for
24 one year as required by Decision No. 63547 in a timely fashion and that the last one had been
25 received by Staff on April 26, 2002. Based on that report, Staff found Bradshaw to be in compliance
26 with the duties outlined in its initial appointment letter as the Respondent's operational manager and
27 that it was making proper use of the revenues collected pursuant to its management of DVWUC.

28 13. In its response, Staff further described that Bradshaw had received two additional

1 appointments as Respondent's operational manager since Decision No. 63547, first by a letter dated
2 June 3, 2002 and subsequently by a later letter dated May 6, 2003. Further progress reports were not
3 required at the time of these appointments.

4 14. Lastly, Staff stated that either Bradshaw or Staff are free to terminate Bradshaw's
5 appointment without cause and with 30 days notice. If either Bradshaw or Staff were to exercise that
6 option, Staff stated that it would appoint a different manager if the need arose.

7 15. Under the circumstances, we understand the concerns voiced by Mr. Greif. The
8 ownership issue is indeed important, and we believe that the issue should be addressed. While the
9 Commission is not the proper forum to address this issue, the Commission may be a necessary party
10 to any litigation if it is brought because of the action resulting from Decision No. 63547.

11 16. Lastly, with respect to the operations of the utility, it appears that Respondent's
12 operations are being conducted properly under the terms of the Staff's agreement with Bradshaw, but
13 we believe that Staff should initiate and complete an audit of Respondent's finances within the next
14 90 days and file its report in this Docket. Thereafter, Bradshaw or any other management entity
15 should be required to file an annual audited financial report which can be examined by Staff to insure
16 that DVWUC's water users are being charged reasonable rates by the management entity until the
17 ownership issue is resolved.

18 CONCLUSIONS OF LAW

19 1. DVWUC is a public service corporation within the meaning of Article XV of the
20 Constitution and A.R.S. § 40-246.

21 2. The Commission has jurisdiction over DVWUC and the Complaint herein.

22 3. Staff should conduct and complete, within 90 days of the effective date of this
23 Decision, an audit of DVWUC's finances to insure that its customers are being charged reasonable
24 rates and, in the future, require Bradshaw or any other management entity which Staff may retain, to
25 file an annual audited financial report which details the operations of the utility under the
26 management entity's agreement with Staff.

27 ORDER

28 IT IS THEREFORE ORDERED that the Utilities Division of the Arizona Corporation

Commission shall conduct and complete, within 90 days of the effective date of this Decision, an audit of the Diamond Valley Water Users Corporation finances and file a report in this Docket with a copy to Complainant, based on Diamond Valley Water Users Corporation's calendar year revenues and expenses for the year 2003 which shall address whether the rates charged for public water utility service are reasonable and that the expenses of the utility are being paid in a lawful manner.

IT IS FURTHER ORDERED that the Utilities Division shall include its agreements with Bradshaw Management Company or any subsequent management entity a requirement that annual audited financial report be filed with the Commission which details all revenues and expenditures during each calendar year following the effective date of this Decision until further Order by the Commission.

IT IS FURTHER ORDERED that Bradshaw Management Company or any subsequent management entity shall file the annual audited financial report by June 1 of the following year.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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COMMISSION	COMMISSIONER	
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2003.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mj

1 SERVICE LIST FOR: DIAMOND VALLEY WATER USERS CORP.

2 DOCKET NO.: W-03263A-00-0470

3 Diamond Valley Water User's Corporation
4 4754 East Donna Drive
5 Prescott, AZ 86301

6 Bradshaw Management Corp.
7 P.O. Box 20939
8 Sedona, AZ 86341

9 Kevin Greif
10 1140 N. Opal Drive
11 Prescott, AZ 86303

12 Christopher Kempley, Chief Counsel
13 Legal Division

14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, AZ 85007

17 Ernest G. Johnson, Director
18 Utilities Division

19 ARIZONA CORPORATION COMMISSION
20 1200 West Washington Street
21 Phoenix, AZ 85007